

## ~~STUDENTS~~

### ~~IN GENERAL~~

#### ~~§8-2 INVESTIGATIONS AND STUDENT SEARCHES AND SEIZURE~~

##### A. Purpose

1. Whether a search of a student is permissible depends on a balancing of the student's particular right to privacy and freedom in a circumstance from unreasonable search and seizure against the school division's responsibility to protect the health, safety and welfare of all persons in the school community and to carry out its educational mission.

2. To maintain order and discipline in the schools and to protect the safety and welfare of students, personnel and visitors, school authorities may search a student, student desks, student lockers, school-provided storage spaces, school-provided computers and other electronic devices in accordance with Policy 8650, Student Technology Acceptable/Responsible Use Policy, and private motor vehicles under the circumstances outlined in this policy and may seize illegal, unauthorized or contraband materials discovered in the search.

3. Whenever it appears that searching a student may be necessary, school officials must examine their anticipated conduct carefully to determine:

- a. Whether their plan of action actually amounts to a search because it will intrude on a justified privacy expectation, and, if so,
- b. What standards must be satisfied to make the search reasonable and lawful under the Fourth Amendment.

School authorities have a responsibility to investigate suspicions of violations of law or School Board policy by students and to report law violations to law-enforcement authorities. They also should cooperate with law-enforcement authorities who are investigating criminal acts. When an investigation by law-enforcement authorities involves interrogation of a student who is suspected of involvement in a crime, and the student's parents or guardians are not present, the principal of the school, or designee, shall be present.

4. This policy sets forth conditions and procedures for individualized searches of students' persons and property and of school property used by students and for the generalized inspections of school property. School Resource Officers are not school officials for search purposes and will not be involved in any school official search except to ensure physical safety of students and staff. Law enforcement operates by a probable cause standard that is not applicable to school officials conducting searches for school purposes. Examples are given in this policy, but not every situation can be anticipated.

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B. Conduct Amounting To A Search

1. The examples given below are offered to help school staff identify search situations that must be supported by a lawful justification.

2. In general:

- a. The more difficulty school officials have in gaining access to something that is otherwise inaccessible, the more likely it is that their conduct amounts to a search. For example, excluding emergencies and other specific exceptions, student searches involve:
  - (i) physically examining a student's person, including outer clothing and other closely connected possessions such as handbags and knapsacks;
  - (ii) looking through personal possessions such as bags, books, and closed containers;
  - (iii) handling or feeling any closed opaque item to determine its contents when they cannot be inferred by the item's shape or other publicly exposed physical properties;
  - (iv) opening any closed opaque container;
  - (v) forcibly prying open locked containers or possessions such as lockers or automobiles to gain access;
  - (vi) using extraordinary means to enlarge the view into closed or locked areas, containers, or possessions (e.g., spreading the crack between locker doors with a pry bar to obtain a better view);
  - (vii) taking extraordinary steps to penetrate natural or other barriers that screen activities or possessions from open public view

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(e.g., using a ladder to gain a better vantage point for observation); and

3. In the school setting, protected places or things reasonably assumed to have a degree of privacy by nature include:

- a. the student's person and any immediately connected item such as articles of clothing and bags of any sort;
- b. enclosed stalls within public rest rooms, dressing areas, and similar places when occupied by a student;
- c. any closed opaque container that might generally be a repository of personal effects, including boxes of any kind, folders, notebooks, bags and packages of any kind;
- d. papers, notes, ledgers, calendars, appointment books, literature, and the like;
- e. any school property assigned for individual use by a student, such as lockers, desks, and work areas not accessible by the public; and,
- f. student automobiles or other vehicles.

4. Exceptions. Under certain highly limited conditions, conduct that is normally regarded as a search can be exempted from Fourth Amendment standards. In the school setting these exceptions occur when otherwise justified privacy expectations are diminished: (1) if an activity or possession is in open public view; (2) if an emergency occurs; (3) if free and voluntary consent is given to a search; or (4) if an item is abandoned. Persons or possessions that come under one of these exceptions have reduced Fourth Amendment protection against government intrusions.

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C. Reasonable Suspicion Searches

1. Principals and their designees may search students and their property while on school property, at a school function or a school-sponsored event, when they have reasonable suspicion to believe:

- a. a law, school rule or policy has been violated and that such student is in possession of evidence thereof or contraband materials;
- b. **that the student** is in possession of drugs, alcohol, weapons, or other substances, images or articles that could be illegal or harmful or dangerous to the student or to others; or
- c. **that the student** is under the influence of drugs, alcohol, or other substances and such student is in possession of evidence thereof.

2. All individual searches by school officials must be based on reasonable suspicion. To be lawful, reasonable suspicion must:

- a. exist at the inception of an individualized search; and
- b. be reasonably related in scope to the circumstances that justified it and not be excessively intrusive in light of the age and sex of the student and the nature of the infraction. Searches of students must be conducted in the principal's office or other non-public area except in emergency circumstances requiring quick response. In all cases a witness should be present.

3. Prohibited Searches. **LCPS school officials are prohibited from conducting strip searches, urinalysis exams, and breathalyzer tests.**

4. Electronic Devices or Cell Phone. Personal cell phones or other private electronic devices of students may not be searched except upon reasonable suspicion outlined in paragraph B above. If within the scope of a search of a student's electronic device, possible pornography of any type is discovered, it must not be distributed, transmitted or shown to anyone except law enforcement and it must be promptly reported to local law enforcement.

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##### D. Individualized Searches of School Property Used by Students

1. **School Facilities and Equipment.** Certain school facilities and equipment are made available to students for use and keeping personal belongings, books and other materials of the student while in the school and for use in student learning. Such facilities and equipment, which may include computers or other electronic devices, lockers, desks, cabinets, and other storage facilities, remain the property of the school, and the school retains a right to see that they are properly used. Students are responsible for the contents of such facilities assigned to them. **Lockers or other such facilities are subject to generalized inspections.**

School personnel shall respect the privacy of students' personal belongings in such storage facilities under ordinary circumstances. However, if a principal or designee has a reasonable suspicion, as provided in paragraph (B), the principal or designee has a responsibility to investigate and is therefore authorized and expected to open the locker or other facility to determine its contents.

When a principal or designee determines, as provided in paragraph (B), that a locker or other storage facility should be searched, the student to whom the locker or other storage facility is assigned should be present, if available, and should be informed of the reason for the search and requested to open the locker or other storage facility. If the student refuses, the principal or designee should open the locker or other storage facility and inspect the contents. If the reasonable suspicion of the principal or designee is also relative to the student, the principal or designee may search the student and the personal belongings of the student in accordance with this policy.

Nothing in this section shall be interpreted as denying a principal or designee the right to open and inspect a locker or its contents if he or she has reason to believe that the immediate safety or welfare of the students or school property is in jeopardy in an emergency.

E. Inspections of School Property. The school's interest in generalized inspections is deterrence. Before conducting a suspicionless random inspection of the school lockers, school computers or other electronic devices, school desks, cabinets, and other storage facilities, **the Superintendent shall develop** a written regulation to this policy outlining the

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issues being addressed, providing notice to the parents and students of the nature and purpose of the random inspections, and stating the neutral inspection plan including the objective criteria to be used to select students in a manner that assures that the selection process is not subject to the discretion of the administrators. **The criteria shall first be published in the Student Rights and Responsibilities Handbook and signage shall be posted in locker areas informing students that all lockers are subject to random inspections prior to conducting any random inspections of student lockers. All signage must state the student is responsible for the content of the assigned locker.**

F. Automobile Searches. Automobiles on school property or at school sponsored events are subject to search by principals or their designees if such principal or designee has a reasonable suspicion that such automobile search will yield evidence of a violation of school rule or policy, the law, or the presence of drugs, alcohol, weapons, or other substances, images or articles that could be illegal, harmful or dangerous or constitute contraband.

Once reasonable suspicion is established, student consent to search may also be requested, if possible, but failure to give consent, or to retract it once given, does not deter the search based upon reasonable suspicion.

The Plain View exception permits school officials to observe student vehicles from a place exterior to the vehicle on school property and observe its contents without touching the vehicle. The observation may serve as a basis for reasonable suspicion search and seizure.

G. Canine Searches. School officials may **request that law enforcement conduct canine searches** to aid in the search for contraband on school property such as in school lockers and in automobiles parked on school property or at school sponsored events. Canines shall not be used to search students. Such canines shall be accompanied by a qualified and authorized trainer who will be responsible for the dogs' actions. A reliable canine which alerts on a particular locker or motor vehicle provides the articulable basis for a reasonable suspicion search.

H. Consent. School authorities **should**, but are not required to, ask for permission of the student to conduct a search.. The student's consent should be given willingly, **without undue intimidation or influence**, and with knowledge of the meaning of the consent. The student may withdraw the consent at any time during the search. If reasonable suspicion existed at the inception, however, then the search may continue despite the withdrawal of

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consent. Refusal to consent will not result in disciplinary action, but a refusal to cooperate with a search may result in disciplinary action for the refusal to cooperate.

I. Plain View. Observing an object in plain view from a public place where the administrator has a right to be is not a search. Examining an object abandoned by a student is not a search.

J. Video and Surveillance. Bus, hallway and other facility surveillance cameras are not searches.

K. School Computers and Other School Electronic Devices. Students shall not have a reasonable expectation of privacy in school computers, the school network, and other school electronic devices. See Policy 8650, Student Technology Acceptable/Responsible Use Policy.

L. Chain of Custody. Effective procedures to preserve the chain of custody of illegal, unauthorized or contraband materials discovered in a search are essential. Illegal items should be seized and turned over to local law enforcement at the earliest opportunity. If that is not possible, then the item should be tagged with identifying information and kept in a locked secure place until retrieved by law enforcement. Other items should be similarly tagged and kept in a locked secure place until no longer needed for the disciplinary proceeding.

M. ~~Investigations by Law Enforcement Authorities. Law enforcement authorities may seek to search a student at school either in response to a request from the school administration or as part of a non-school related investigation. Law enforcement authorities operate under a different set of procedures than school administrators and must have a valid search warrant to search any person, personal property, or school property under most circumstances. School personnel have a responsibility to ensure that proper procedures are followed with students under their care.~~

~~Law enforcement authorities, including school resource officers, occasionally talk with students at school about a variety of topics, which may include illegal activity in the community or at school. Students suspected of involvement in a crime should be interviewed in the presence of a parent or guardian outside of school time whenever feasible. If a law enforcement agent feels that it is necessary to conduct an interview at~~

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~~school with a student who is suspected of involvement in a crime, reasonable effort should be made to inform the student's parents and delay the interview until the parents arrive. If the parents cannot be contacted and the interview cannot be delayed, the principal, or designee, shall remain present during the interview.~~

N. Parent or Guardian Notification. A parent or guardian will be notified, either before or afterwards, of any search involving their student (except for generalized inspections).

O. Seizure. Under the Fourth Amendment, a seizure is any government action that materially interferes with a student's possessory interests in tangible property. In the school setting, something is "seized" when school officials confiscate or take it away from a student. Even if the student hands the item to the official and the transfer cannot be reasonably characterized as being voluntary it would constitute a seizure.

School officials may seize any item discovered during a valid and lawful student search that has been connected with the reason for the search, is contraband or evidence found in the course of a search reasonable in scope or was contraband or evidence freely and voluntarily provided to the school official in the course of reasonable suspicion search.

P. Data Collection. LCPS will develop a system to document all student searches. Data will be collected and reviewed annually at the school and division level.

Q. Training Protocols. LCPS will develop effective training protocols. All school officials who may be involved in conducting a search will be required to attend training and an annual review.

Legal Reference: Section [22.1-279.7](#) of the Code of Virginia

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